

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

916L0121

SENATE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to MINNEHAHA–HABITUAL OFFENDERS.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 22-7-7 be amended to read as follows:

4 22-7-7. ~~When~~ If a defendant has been convicted of one or two prior felonies under the laws
5 of this state or any other state or the United States, in addition to the principal felony, the
6 sentence for the principal felony shall be enhanced by changing the class of the principal felony
7 to the next class which is more severe, but in no circumstance may the enhancement exceed the
8 sentence for a Class C felony. The determination of whether a prior offense is a felony for
9 purposes of this chapter shall be determined by whether ~~it is~~ the prior offense was a felony under
10 the laws of this state or under the laws of the United States at the time of conviction of such
11 prior offense. For the purpose of this section, if the principal felony is not classified it shall be
12 enhanced to the class which has an equal maximum imprisonment. For the purposes of this
13 section, if the maximum imprisonment for the principal felony falls between two classifications,
14 the principal felony shall be enhanced to the class which has the less severe maximum
15 authorized imprisonment.

16 Section 2. That § 22-7-8 be amended to read as follows:



22-7-8. If a defendant has been convicted of three or more felonies in addition to the principal felony and one or more of the prior felony convictions was for a crime of violence as defined in subdivision 22-1-2(9), the sentence for the principal felony shall be enhanced to the sentence for a ~~Class B~~ Class C felony.

Section 3. That § 22-7-8.1 be amended to read as follows:

22-7-8.1. If a defendant has been convicted of three or more felonies in addition to the principal felony and none of the prior felony convictions was for a crime of violence as defined in subdivision § 22-1-2(9), the sentence for the principal felony shall be enhanced by two levels but in no circumstance may the enhancement exceed the sentence for a Class C felony. A defendant sentenced ~~under~~ pursuant to this section is eligible for consideration for parole pursuant to § 24-15-5.

Section 4. That § 22-7-9 be amended to read as follows:

22-7-9. ~~A~~ No prior conviction may ~~not~~ be considered under either § 22-7-7 or 22-7-8 unless the defendant was, on such prior conviction, discharged from prison, jail, probation, or parole within fifteen years of the date of the commission of the principal offense. ~~In addition~~ Moreover, only one prior conviction arising from the same transaction may be considered.

Section 5. That § 22-7-10 be amended to read as follows:

22-7-10. Whenever any jailer, warden, or prison, probation, parole, or law enforcement officer has knowledge that any person charged with a felony has been previously convicted within the meaning of this chapter, ~~it shall become his duty forthwith to report the facts that~~ person shall provide that information to the state's attorney.

Section 6. That § 22-7-11 be amended to read as follows:

22-7-11. Any allegation that a defendant is an habitual criminal shall be filed as a separate information at the time of, or before, arraignment. However, the court may, upon motion, permit

1 the separate information to be filed after the arraignment, but no less than thirty days before the
2 commencement of trial or entry of a plea of guilty or nolo contendere. The information shall state
3 the times, places, and specific crimes alleged to be prior convictions and shall be signed by the
4 prosecutor. An official court record under seal or a criminal history together with fingerprints
5 certified by the public official having custody thereof is sufficient to be admitted in evidence,
6 without further foundation, to prove the allegation that the defendant is an habitual criminal.

7 Section 7. That § 22-7-12 be amended to read as follows:

8 22-7-12. The defendant shall be apprised of the contents of the habitual offender information
9 and shall receive a copy of it. The habitual offender information ~~shall~~ may not be divulged to
10 the jury in any manner unless and until the defendant has been convicted of the principal
11 offense.

12 The defendant shall also be informed of ~~his~~ the right to a trial by jury on the issue of whether
13 ~~he~~ the defendant is the same person as alleged in the habitual criminal information.